STANDARD CHARTERED BANK MALAYSIA BHD

v.

EDEN ENTERPRISES (M) BHD

HIGH COURT MALAYA, KUALA LUMPUR
T SELVENTHIRANATHAN J
[SUIT NO: D7-22-42-2000]
27 FEBRUARY 2003

CIVIL PROCEDURE: *Summary judgment - Banking - Failure to service loan repayments - Whether there were arguable issues - Whether application to be granted - Rules of the High Court 1980, O. 14*

BANKING: *Banks and banking business - Action for recovery of debt - Assets and liabilities transferred and vested in bank via vesting order - Whether vesting order ultra vires Banking and Financial Institutions Act 1989 - Whether regard ought to be had to s. 4(3) of Civil Law Act as opposed to ss. 49 and 50 of Banking and Financial Institutions Act 1989*

The defendant had obtained an overdraft facility and a revolving loan facility from Standard Chartered Bank ('SCB'), the plaintiff's predecessor. *Vide* a vesting order made by another division of this court, the assets and liabilities of SCB were transferred to and vested in the plaintiff pursuant to s. 50 of Banking and Financial Institutions Act 1989 ('the Act'). The plaintiff contended that the defendant defaulted on the payment of interest in relation to the revolving loan and sought to recover the outstanding sum, aside from revoking the aforementioned loan facilities. The plaintiff eventually succeeded in entering a summary judgment against the defendant *vide* O 14 of the Rules of the High Court 1980.

Dissatisfied, the defendant appealed to this court. Whilst admitting to the outstanding debt, it contended that the plaintiff did not have a right or title to pursue such an action as the aforementioned transfer and vesting of assets and liabilities contravened the Act. In effect, the defendant sought to challenge the validity of the vesting order granted by the court on the premise that it was *ultra vires* the Act in that the trial judge had not considered the interpretation of the word "business" in s. 50(8) of the Act.

Held:

[1] It was pertinent to note that the instant appeal arose from an O. 14 application commenced by the plaintiff on the premise that the defendant had no defence to its action to recover the debt in question. As such, it was clearly a fallacy on the defendant's part to come to court in an application of this nature to attempt to challenge an order of another High Court which had been made and perfected, and applied in various proceedings. (pp 674 h & 675 a)

[2] The provisions of the Act are enabling in nature and not prohibitory, in that they made possible the transfer of SCB's business in Malaysia as a whole to the plaintiff through a single application to the High Court. This obviated the need for a piecemeal transfer of assets and liabilities related to the said business. (p 677 d)

[3] It was also untenable for the defendant to submit that the plaintiff and SCB should have proceeded under s. 4(3) of the Civil Law Act 1956 in effecting the transfer. There was no necessity to do so in light of the specific provisions enacted for the purpose of reconstruction of licensed institutions, *ie*, ss 49 and 50 of the Act, and that there was no conflict between s. 4(3) and the latter sections. (pp 678 g-h & 679 a-b)

[Defendant's appeal dismissed with costs.]

Case(s) referred to:

Badiaddin Mohd Mahidin v. Arab-Malaysian Finance Bhd [1998] 2 CLJ 75 FC ***(refd)***

Leong Moh Sawmill Co Sdn Bhd (in liquidation) v. Standard Chartered Bank & Ors [1997] 2 CLJ 131 CA ***(refd)***

Dato' Fathi Hj Ahmad, ex p Standard Chartered Bank [1996] MLJU 596 ***(refd)***

Standard Chartered Bank v. Asia Transport Service (M) Sdn Bhd & Ors [1995] 4 CLJ 652 HC ***(refd)***

Legislation referred to:

Banking and Financial Institutions Act 1989, s. 50(1), (3), (8)

Civil Law Act 1956, ss. 4(3), 49(1)(b), (7), (9)(a), (10), 50(1), (2), (3), (7), (8)

Interpretation Acts 1948 and 1967, ss. 17A

Rules of the High Court 1980, O. 14

For the defendant/appellant - MS Murthi; M/s Murthi & Partners

For the plaintiff/respondent - Lim Siew Ming; M/s Raja, Darryl & Loh

Reported by M Maheswaran

JUDGMENT

T Selventhiranathan J:

This was an appeal *via* encl. (12) by the defendant against the decision of the learned senior assistant registrar ("the registrar") allowing the plaintiff to sign final judgment against the defendant upon its application to do so *vide* encl. (5) pursuant to O. 14 of the Rules of the High Court 1980 ("the O. 14 application").

The undisputed facts showed that Standard Chartered Bank ("SCB"), a bank incorporated in England and with a business address at No 2 Leboh Pantai, PO Box 153, 10710 Penang, through a letter of offer dated 10 April 1992, agreed to give to the defendant an overdraft facility of RM2,000,000 and a revolving-loan facility of RM7,000,000 (collectively "the facilities" or "both the facilities"). SCB was the predecessor bank of the plaintiff and this action was brought by the plaintiff as the successor bank to SCB when the assets and liabilities of the latter in Malaysia were transferred to and vested in the plaintiff pursuant to a vesting order made by the High Court, the relevant terms of which will be elaborated upon later in this judgment.

The offer of the facilities was duly accepted by the defendant on 13 April 1992 as shown in exh. "TPC1" annexed to the second affidavit of one Toh Pei Chien, the accounts manager of the plaintiff, which affidavit at encl. (9) was affirmed on 3 April 2000.

The plaintiff alleged that the defendant defaulted in the payment of the interest under the revolving-loan facility, thus compelling the plaintiff to recall both the facilities and demand the repayment of the defendant's outstanding debt. As at 30 June 1999, under both the facilities, the total outstanding debt of the defendant was RM7,887,074.79, with accruing interest at 3.5% per annum above the plaintiff's base lending rate, calculated from 1 July 1999 until the date of full settlement.

It is pertinent to note that the defendant did not dispute the outstanding debt at all but contended instead that the transfer of the assets and liabilities of SCB to the plaintiff was not in accordance with the law, namely, the Banking and Financial Institutions Act 1989 ("the Act"). It was therefore urged that the plaintiff did not have a good title to the monies which were loaned to the defendant and belonged to SCB for the reasons which will follow shortly. As such, it was argued that the plaintiff had no right to pursue this claim against the defendant.

Essentially, the defendant questioned the validity of a vesting order ("the vesting order") dated 28 April 1994 made by the High Court in Malaya at Kuala Lumpur in originating summons No D3-24-88-1994 transferring and vesting the assets, rights, liabilities and obligations, amongst others, of SCB in Malaysia upon the plaintiff. That vesting order was made by VC George J (as he then was) pursuant to s. 50 of the Act upon the joint application of SCB as the transferor of the said assets, rights, liabilities and obligations and the plaintiff as the transferee thereof to formalize and give effect to a sale and purchase agreement dated 12 April 1994 entered into between SCB and the plaintiff. Hereinafter a reference to a section or other provision of law by itself shall mean that section or that other provision as it appears in the Act, unless stated otherwise.

The learned counsel for the defendant contended that the court, in granting the vesting order on 28 April 1994 pursuant to s. 50, had not taken into consideration the interpretation of the word "business" in s. 50(8) which reads as follows:

> (8) For the purposes of this section:
>
> 'business' means any activity carried on for the purpose of gain or profit and includes all property derived from, or used in or for the purpose of, carrying on such activity and all rights and liabilities arising from such activity.

In view of the above interpretation provision, the learned counsel for the defendant submitted that the vesting order made under s. 50 could only provide for the transfer and vesting of the whole of the business of SCB worldwide upon the plaintiff and could not be confined to that part of the worldwide business of SCB located in Malaysia alone, as was done by the vesting order. Consequently, it was urged that the vesting order was *ultra vires* the Act and therefore not binding on the defendant. He elaborated that the vesting order should have also provided for the transfer to and vesting in the plaintiff of the whole of the business of SCB located everywhere else in the world, "in other countries such as in Hong Kong, Australia, New Zealand, India, and Pakistan" in order for the vesting order to be valid.

However, it must be remembered that the instant appeal before this court arose out of the Order 14 application taken out by the plaintiff for summary judgment primarily on the ground that the defendant had no defence to this action. In the circumstances it was clearly a fallacy on the part of the defendant to come to court in an application of this nature to attempt to challenge an order of another High Court (ie the vesting order) which had

been made and duly perfected and applied in various proceedings before the superior courts in this country: see, for example, the decision of the Court of Appeal in *Leong Moh Sawmill Co Sdn Bhd (In liquidation) v. Standard Chartered Bank and Others* [1997] 2 CLJ 131, the decision of Richard Talalla J (as he then was) in *Standard Chartered Bank v. Asia Transport Service (M) Sdn Bhd and Others* [1995] 4 CLJ 652 and my decision in *Dato' Fathi bin Haji Ahmad, ex parte Standard Chartered Bank* [1996] MLJU 596. See also Malaysian Case Law Library on CD-Rom – 2000 Release 1 of 3. No doubt these decisions did not deal explicitly with the issue raised in the instant appeal but that was because, to my mind, it was a non-issue in view of the clear provisions of the Act, particularly s. 50(3) providing for the non-challengability of an order made under s. 50(1). Those provisions of the Act shall be detailed later in this judgment.

The learned counsel for the defendant placed heavy reliance on the decision of the Federal Court in *Badiaddin bin Mohd Mahidin & Anor v. Arab-Malaysian Finance Berhad* [1998] 2 CLJ 75 in support of his contention that the vesting order was irregular and should be set aside and consequently result in the dismissal of the plaintiff's claim against the defendant. However, the principles enunciated in *Badiaddin* do not support the stand of the defendant and, further, must be read subject to the statutory stricture in s. 50(3) putting any vesting order made under s. 50(1) virtually beyond the pale of challenge by stipulating that "the order shall have effect according to its terms notwithstanding anything in any law or in any rule of law, and shall be binding on any person thereby affected, regardless that the person so affected is not a party to the proceedings under this section (ie s. 50) or any other related proceedings, or had no notice of the proceedings under this section or of other related proceedings".

In *Badiaddin*, the Federal Court, in considering the exceptional circumstances in which a final order of one High Court could be set aside by another High Court, laid down the principles to be applied in such a situation in the following terms in the judgment of Mohd Azmi FCJ (as he then was) at pp. 92 to 93 of the report of that case:

> It is of course settled law as laid down by the Federal Court in the *Hock Hua Bank* case that one High Court cannot set aside a final order regularly obtained from another High Court of concurrent jurisdiction. But one special exception to this rule (which was not in issue and therefore not discussed in *Hock Hua Bank*) is where the final judgment of the High Court could be proved to be null and void on ground of illegality or lack of jurisdiction so as to bring the aggrieved party within the principle laid

down by a number of authorities culminating in the Privy Council case of *Isaacs v. Robertson* [1985] AC 97 where Lord Diplock, while rejecting the legal aspect of voidness and voidability in the orders made by a court of unlimited jurisdiction, upheld the existence of a category of orders of the court

> ... which a person affected by the order is entitled to apply to have set aside *ex debito justitiae* in the exercise of the inherent jurisdiction of the court, without his needing to have recourse to the rules that deal expressly with proceedings to set aside orders for irregularity, and give to the judge a discretion as to the order he will make.

The Privy Council through Lord Diplock also emphasized that the courts in England have not closed the door as to the type of defects in the final judgment of the court that can be brought into the category that attracts *ex debito justitiae* the right to have it set aside without going into the appeal procedure, 'save that specifically it includes orders that have been obtained in breach of rules of natural justice'. Similarly, in this country the statement of Abdoolcader J (as he then was) in *Eu Finance Berhad v. Lim Yoke Foo* [1982] 2 MLJ 37 @ 39 provides the correct guideline on the subject:

> The general rule is that where an order is a nullity, an appeal is somewhat useless as despite any decision on appeal, such an order can be successfully attacked in collateral proceedings; it can be disregarded and impeached in any proceedings, before any court or tribunal and whenever it is relied upon – in other words, it is subject to collateral attack. In collateral proceedings the court may declare an act that purports to bind to be non-existent. In *Harkness v. Bells' Asbestos and Engineering Ltd* [1967] 2 QB 729, 736 Lord Diplock LJ (now a Law Lord) said (at p. 736) that "it has been long laid down that where an order is a nullity, the person whom the order purports to affect has the option either of ignoring it or of going to the court and asking for it to be set aside".

For my part, I must hasten to add that apart from breach of rules of natural justice, in any attempt to widen the door of the inherent and discretionary jurisdiction of the superior courts to set aside an order of court ex debito justitiae to a category of cases involving orders which contravened 'any written law', the contravention should be one which defies a substantive statutory prohibition so as to render the defective order null and void on ground of illegality or lack of jurisdiction. It should not for instance be applied to a defect in a final order which has

contravened a procedural requirement of any written law. The discretion to invoke the inherent jurisdiction should also be exercised judicially in exceptional cases where the defect is of such a serious nature that there is a real need to set aside the defective order to enable the court to do justice. In all cases, the normal appeal procedure should be adopted to set aside a defective order, unless the aggrieved party could bring himself within the special exception. (emphasis added.)

Applying the above-emphasised principles to the facts of this action, one may well ask, rhetorically, how or in what manner did the vesting order, in the words of Mohd Azmi FCJ, "defy a substantive statutory prohibition (in the Act) so as to render the defective order null and void on ground of illegality or lack of jurisdiction", bearing in mind that the Act itself in the all-encompassing language of s. 50(3) does not permit any challenge to be mounted against the vesting order on any of the specified ostensible grounds on which such a challenge may otherwise be conceivably mounted?

The relevant provisions of the Act in this context are enabling in nature and not prohibitory in that they made possible the transfer of SCB's business in Malaysia as a whole to the plaintiff through a single application to the High Court, thereby obviating the need for a piecemeal transfer of the assets and liabilities related to the said business. There is nothing in the Act to prohibit such transfer or to specify that such transfer would be null and void unless the whole of SCB's business worldwide is transferred to the plaintiff at the same time as well. If, as the learned counsel for the defendant stressed, ss. 49 and 50 enabled the transfer of the whole of the worldwide business of SCB to the plaintiff, it defied logic to argue that that part of SCB's worldwide business located in Malaysia only could not be so transferred in the absence of any specific prohibitive provision in the Act, evinced in clear and unequivocal language, preventing the same from being done, as the whole of anything is made up of its component parts. Any such specific prohibitive provision was certainly not in existence for consideration under ss. 49 and 50 or under the other provisions of the Act.

In fact, insofar as an attack on a final order of a court of unlimited civil jurisdiction with the intended result of rendering that order effete is concerned, the late Peh Swee Chin FCJ (as he then was) went further than the other judges of the Federal Court did in *Badiaddin* by explaining the efficacy of a perfected order of the High Court in the following words at pp. 935 to 936 of the report of that case:

> ... Once perfected, a judgment of the High Court is also entitled to the obedience and respect from the parties to it on the basis of a command from a superior court of unlimited civil jurisdiction in the course of contentious litigation, see *Issacs v. Robertson* [1985] AC 97; *Pembenaan KSY Sdn Bhd v. Lian Seng Properties Sdn Bhd* [1991] 1 CLJ 263; [1991] 1 CLJ (Rep) 343 *Puah Bee Hong v. Pentadbir Tanah Daerah Wilayah Persekutuan* [1994] 2 CLJ 705. It is elementary that a superior court is not any inferior court or statutory tribunal, (such as a Land Administrator under the National Land Code as *in Eu Finance Bhd v. Loke Yoke Fou* [1982] 2 MLJ 37). *It is also long established that one can apply to set aside an order of a superior court only in direct proceedings filed for the very purpose of having it set aside on valid grounds, but without doing so, one cannot attack its invalidity laterally by raising an objection to its invalidity in any other proceedings, without filing proceedings for applying to set it aside first. When one wishes to file such proceedings to so set it aside, one must do so within the same proceedings or action in which the same order was obtained and not in a separate fresh proceeding or new action on any ground other than those mentioned in the quoted passage from Hock Hua Bank v. Sahari bin Murid, and as mentioned later in this judgment in connection with a consent judgment.* (emphasis added.)

If one were to apply the principles enunciated above by the late Peh Swee Chin FCJ, this court would clearly have no business to look into the validity or otherwise of the vesting order as no step was taken by the defendant to have the order set aside in the proceeding in which it was granted. It must also be borne in mind that his Lordship made the above pronunciation in a situation where there was no specific provision in a law, such as in the terms of s. 50(3), to be considered. However, the view of the other two judges in *Badiaddin* appears to be that the order can be attacked in collateral proceedings such as the present action but that view will necessarily have to be modified in the context of the overriding statutory provision found in s. 50(3).

The additional argument of the learned counsel for the defendant that s. 4(3) of the Civil Law Act 1956 "can be invoked to validate prospectively the transfer of the loan" from SCB to the plaintiff and implying therefore that SCB and the plaintiff should have resorted to that section to effect the transfer is, with respect, untenable as there was no necessity for SCB and the plaintiff to have recourse to the said s. 4(3) in the light of the clear relevant provisions of the Act providing specifically for the transfer of the whole or any part of the business of a licensed institution to another entity, pursuant to s. 49(1)(b), with the approval of the Minister for the

time being charged with the responsibility for finance ("the Minister") in accordance with the other provisions of s. 49. Moreover, ss. 49 and 50 were enacted for a specific purpose, ie for the reconstruction of licensed institutions as defined in the Act and to facilitate effect being given to such reconstruction, in a later law, being the Act, which came into force on 1 October 1989 as compared with the general purpose of the earlier s. 4(3) of the Civil Law Act 1956 which came into force in West Malaysia on 7 April 1956 and in East Malaysia on 1 April 1972.

In the foregoing circumstances the insistence of the learned counsel for the defendant that the earlier s. 4(3) of the Civil Law Act 1956, which was enacted for a general purpose, should be applied preferentially over the later ss. 49 and 50 of the Act, which were enacted for specific purposes, has no basis in law and is consequentially devoid of any merit, particularly so when there is no conflict between the said s. 4(3), and ss. 49 and 50. Section 49 was enacted specifically for the purposes stated in that section while s. 50 was enacted specifically to give effect to those purposes through a vesting order of the High Court. On the other hand, s. 4(3) of the Civil Law Act 1956, although dealing generally with the absolute assignment of a debt or other legal chose in action in the circumstances stated in the said s. 4(3), is to be construed as being confined or restricted in its application to such an absolute assignment only and therefore incapable of being resorted to for achieving the wider results intended by ss. 49 and 50 in relation to the reconstruction of financial institutions under the Act.

In this context it would indeed be most apposite to apply s. 17A of the Interpretation Acts 1948 and 1967 to the interpretation of ss. 49 and 50, and in particular of s. 50(8) in the context of the arguments of the learned counsel for the defendant adverted to earlier in this judgment in relation to the interpretation of "business" in s. 50(8), to arrive at the proper construction of those sections. The said s. 17A reads as follows:

17A. Regard to be had to the purpose of Act

In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

Therefore, in addition to the foregoing, and having s. 17A of the Interpretation Acts 1948 and 1967 in mind, the contention of the learned counsel for the defendant made *in vacuo* with reference only to the interpretation of the word "business" in s. 50(8) cannot stand if one were to look at ss. 49(1)(b), 49(7), 49(9) and 49(10) which provide as follows:

49. Sanction required for reconstruction, etc of licensed institutions

(1) No person shall enter into an agreement or arrangement:

(a) ...;

(b) **for the** sale, disposal, or **transfer** howsoever, **of the whole or any part of the business** of a licensed institution;

(c) ...; or

(d) ...;

unless:

(A) the proposed agreement or arrangement is in writing; and

(B) all the parties thereto have first made an application in writing to the Minister for his approval of such agreement or arrangement and have obtained the Minister's approval thereto.

(2) ...

(3) ...

(4) ...

(5) ...

(6) ...

(7) Upon receiving an application and the recommendation of the Bank under this section (ie the Central Bank of Malaysia as interpreted in section 2 of the Act), the Minister may approve the application with or without any modifications, variations or conditions, or refuse the application.

(8) ...

(9) An application under:

(a) subsection (1)(b) shall not be recommended by the Bank for approval and shall not be approved by the Minister where the agreement or arrangement would result in the sale, disposal, or **transfer** howsoever, **of any part of the business** of the licensed institution to any person which is not a licensed institution, except in relation to a part of the business, being a part which does not require to be licensed under this Act; and

(b) subsection (1)(c) shall not be recommended by the Bank for approval and shall not be approved by the Minister except in the case of an amalgamation or merger with another licensed institution.

(10) In this section, 'business' has the meaning assigned to it in section 50(8). (emphasis added)

In view of the reference in s. 49(10) to s. 50(8) and the specifying of "the whole or any part of the business" in s. 49(1)(b) and "any part of the business" in s. 49(9)(a), the argument espoused by the learned counsel for the defendant in relation to the interpretation of the word "business" in s. 50(8) and to seek thereby to have the vesting order rendered null and void could not hold water. It is also trite that an interpretation provision in any law cannot be used to curb or prevail over the applicability of a substantive provision in that law expressed in clear and unequivocal language. The interpretation of "business" in s. 50(8) must accordingly be construed as being applicable to the whole or any part of the business of SCB located anywhere in the world in the light of ss. 49(1)(b) and 49(9)(a) as well as in the light of s. 50(7) which is reproduced later in this judgment.

The marginal note to s. 50 reads:

> Application to High Court to facilitate agreement or arrangement for transfer of whole or part of business of licensed institution being given effect to.

Although the marginal note to any provision in a law is not part of that law as enacted, the marginal note to s. 50 confirms the substantive provisions of ss. 49(1)(b) and 49(9)(a), ie that they were to be applicable to the whole as well as any part of the business of a licensed institution irrespective of wherever it may be located in the world: for further confirmation see s. 50(7) reproduced below.

Section 50(1) enables the parties involved in any arrangement or agreement to transfer any business in respect of which the Minister has granted his approval under s. 49(7) to apply to the High Court for such order "as may be required by them to facilitate or enable the agreement or arrangement being given effect to, ...". Section 50(1) then lists out the orders that may be sought in terms of paras. (a) to (l) thereof. Sections 50(2), 50(3) and 50(7) then provide as follows:

> (2) On the hearing of an application under subsection (1), the High Court may grant an order in the terms applied for, or with such modifications or variations as the Court deems just or proper in the circumstances of the case.
>
> (3) Where the order of the High Court under subsection (1) provides for the transfer of any property or business vested in or held by the transferor, either alone or jointly with any other person, then, by virtue of the order, that property or business shall, on and from the transfer date, become vested in or held by the transferee either alone or, as the case may be, jointly with such other person, **and the order shall have effect according to its terms notwithstanding anything in any law or in any rule of law, and shall be binding on any person thereby affected, regardless that the person so affected is not a party to the proceedings under this section or any other related proceedings, or had no notice of the proceedings under this section or of other related proceedings.**
>
> (4) ...
>
> (5) ...
>
> (6) ...
>
> (7) **An order of the High Court under subsection (1) may relate to any property or business of the transferor outside Malaysia** and, if it so relates, effect may be given to it either in accordance with any reciprocal arrangements relating to enforcement of judgments that may exist between Malaysia and the country, territory or place outside Malaysia in which such property or business is, or where there are no such arrangements, in accordance with the law applicable in such country, territory or place. (emphasis added)

It becomes abundantly clear from a complete and total reading of the provisions of the Act reproduced above that the contention of the learned counsel for the defendant cannot be sustained. If reliance were to be placed solely on the interpretation of "business" in s. 50(8) to argue that it was intended that the whole of the business of SCB, irrespective of where it is

located or conducted in the world, should have been transferred to the plaintiff by the vesting order, then s. 50(7) would be rendered otiose. By providing for the transfer and vesting of any property or business of the transferor located outside Malaysia upon the transferee, that section clearly envisages the transfer as well as the non-transfer of any part of the worldwide business of SCB to the plaintiff in this action. Therefore the transfer of the business of SCB in Malaysia only to the plaintiff is *intra vires* the Act and the interpretation provision relating to "business" in s. 50(8) cannot be used to render null and void the vesting order which reflected the clear intention of the legislature to allow the transfer to and vesting in the transferee plaintiff of the business of the transferor SCB, in whole or in part and located anywhere in the world, as approved by the Minister.

It further becomes crystal clear in light of the foregoing that the interpretation of "business" in s. 50(8) must mean any activity of the transferor carried on for the purpose of gain or profit in Malaysia as well as, by virtue of s. 50(7), in any country, territory or place outside Malaysia. Any order made by the High Court under s. 50 would be essentially to facilitate or enable the agreement or arrangement approved by the Minister pursuant to ss. 49(1) and 49(7) to be given effect to, and when those sections provide "for the sale, disposal or transfer howsoever of the whole or any part of the business of a licensed institution" (s. 49(1)) to be first submitted to the Minister for his approval and, upon approval being granted with or without modifications, variations or conditions (s. 49(7)), then to apply to the High Court to give effect to the approved agreement or arrangement, the vesting order which is made to facilitate or give effect to the approved agreement or arrangement cannot be impugned (s. 50(3)) as long as it is in conformity with the agreement or arrangement as approved by the Minister. The only grounds on which the vesting order could conceivably be called into question would be either that it did not conform with the approved agreement or arrangement, or that the approved agreement or arrangement was *ultra vires* the Act or *ultra vires* any other law which prevailed over the Act, consequentially rendering the vesting order null and void. In the absence of any such evidence of the non-conformity of the vesting order with the approved agreement or arrangement in relation to SCB and the plaintiff, as well as in the absence of any such evidence of the approved agreement or arrangement being made *ultra vires* the Act or being made *ultra vires* any other law which prevailed over the Act, the argument of the learned counsel for the defendant was bound to and did collapse. The various judgments in *Badiaddin* should therefore be construed in this

context before the principles set out therein could be called in aid to be applied to the facts of this action. Unfortunately neither the learned counsel for the defendant nor for the plaintiff approached the issue in this action in the manner that it has been dealt with in this judgment.

For the above reasons, the appeal of the defendant in encl. (12) was dismissed with costs and the order of the registrar allowing the plaintiff to sign final judgment against the defendant upon the terms as prayed for in the O. 14 application was accordingly confirmed.